

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JULIO SMITH PARRA,

Plaintiff,

vs.

HOWARD SKOLNIK, et. al.

Defendants.

3:11-cv-00913-LRH (WGC)

**REPORT AND RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Larry R. Hicks, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4.

Before the court are Plaintiff's motions for summary judgment. (Doc. # 35 and Doc. # 44.)<sup>1</sup> Defendants opposed (Doc. # 36 and Doc. # 47) and Plaintiff replied. (Doc. # 37 and Doc. # 56.) After a thorough review, the court recommends that Plaintiff's motions be denied.

**I. BACKGROUND**

At all relevant times, Plaintiff Julio Smith Parra was an inmate in custody of the Nevada Department of Corrections (NDOC). (Pl.'s Compl. (Doc. # 6) at 1.) The events giving rise to this litigation took place while Plaintiff was housed at Ely State Prison (ESP). (*Id.*) Plaintiff, a pro se litigant, brings this action pursuant to 42 U.S.C. § 1983. (*Id.*) Defendants are E.K. McDaniel, Ronald Bryant, and Dann Doty<sup>2</sup>. (*See* Doc. # 6; Screening Order (Doc. # 5).)

On screening, the court determined that Plaintiff could proceed with the following

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<sup>1</sup> Refers to court's docket number.

<sup>2</sup> Incorrectly identified by Plaintiff as defendant Dori.

1 claims: (1) Count I- retaliation against defendant Bryant; (2) Count II-violation of his due  
2 process rights against defendant Doty; (3) Count III- a supervisory liability claim against  
3 defendant McDaniel related to the underlying allegations of Counts I and II. (Doc. # 5.)

4 In Count I, Plaintiff alleges that on May 13, 2010, there was an incident in the culinary  
5 at ESP which involved two other inmates and one correctional officer, but defendant Bryant  
6 questioned Plaintiff about the incident. (Doc. # 6 at 4-6.) Plaintiff claims that he does not  
7 understand English well and asked Bryant for an interpreter, but was told if he needed an  
8 interpreter he should pay for one. (*Id.*) Plaintiff also alleges that Bryant told Plaintiff he was  
9 going to be placed in the segregation unit because he had filed inmate grievances against two  
10 correctional officers and he was not cooperating in the investigation. (*Id.*) Plaintiff alleges that  
11 Bryant sent him to the segregation unit and made a false rule violations charge against him in  
12 retaliation for having filed grievances against correctional officers. (*Id.*) Plaintiff claims that  
13 he remained in administrative segregation from May 13, 2010 through May 27, 2010. (*Id.*)

14 In Count II, Plaintiff alleges that on May 23, 2010, he received a notice of disciplinary  
15 charge form for possession of contraband. (Doc. # 6 at 7-10.) Plaintiff asserts that he pled not  
16 guilty, requested an interpreter, and also requested two witnesses. (*Id.*) He claims that the  
17 disciplinary officer, defendant Doty, denied him an interpreter and his two requested witnesses  
18 at the disciplinary hearing on May 23, 2010. (Doc. # 6 at 7.) Plaintiff further alleges that he did  
19 not receive twenty-four hours notice of the disciplinary hearing, and that he was found guilty  
20 of a rule violation without sufficient evidence. (*Id.*) He was sentenced to fourteen days  
21 administrative segregation and 180 days in "special unit 7" which included twenty-three hours  
22 a day in lock-down confinement. (*Id.* at 8.) Plaintiff also lost his canteen privileges. (*Id.*)

23 In Count III, Plaintiff alleges that defendant McDaniel approved defendant Bryant's  
24 decision to place him in administrative segregation, and also approved defendant Doty's  
25 decision to deny him a translator and two witnesses at his disciplinary hearing. (Doc. # 6 at 11.)  
26 Plaintiff claims the approval of these actions by defendant McDaniel was memorialized in a  
27 memorandum sent to Plaintiff on August 13, 2010. (*Id.*)

1 Plaintiff now moves for summary judgment.

2 **II. LEGAL STANDARD**

3 “The purpose of summary judgment is to avoid unnecessary trials when there is no  
4 dispute as to the facts before the court.” *Northwest Motorcycle Ass’n v. U.S. Dep’t of Agric.*,  
5 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). All reasonable inferences are drawn in  
6 favor of the non-moving party. *In re Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008) (citing  
7 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). Summary judgment is appropriate  
8 if “the pleadings, the discovery and disclosure materials on file, and any affidavits show that  
9 there is no genuine issue as to any material fact and that the movant is entitled to judgment as  
10 a matter of law.” *Id.* (quoting Fed.R.Civ.P. 56(c)). Where reasonable minds could differ on the  
11 material facts at issue, however, summary judgment is not appropriate. *See Anderson*, 477 U.S.  
12 at 250.

13 The moving party bears the burden of informing the court of the basis for its motion,  
14 together with evidence demonstrating the absence of any genuine issue of material fact.  
15 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Although the parties may submit evidence  
16 in an inadmissible form, only evidence which might be admissible at trial may be considered  
17 by a trial court in ruling on a motion for summary judgment. Fed.R.Civ.P. 56(c).

18 In evaluating the appropriateness of summary judgment, three steps are necessary:  
19 (1) determining whether a fact is material; (2) determining whether there is a genuine issue  
20 for the trier of fact, as determined by the documents submitted to the court; and (3)  
21 considering that evidence in light of the appropriate standard of proof. *See Anderson*, 477 U.S.  
22 at 248-250. As to materiality, only disputes over facts that might affect the outcome of the suit  
23 under the governing law will properly preclude the entry of summary judgment; factual  
24 disputes which are irrelevant or unnecessary will not be considered. *Id.* at 248.

25 In determining summary judgment, a court applies a burden shifting analysis. “When  
26 the party moving for summary judgment would bear the burden of proof at trial, ‘it must come  
27 forward with evidence which would entitle it to a directed verdict if the evidence went  
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1 uncontroverted at trial.’[ ] In such a case, the moving party has the initial burden of  
2 establishing the absence of a genuine issue of fact on each issue material to its case.” *C.A.R.*  
3 *Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal  
4 citations omitted). In contrast, when the nonmoving party bears the burden of proving the  
5 claim or defense, the moving party can meet its burden in two ways: (1) by presenting evidence  
6 to negate an essential element of the nonmoving party’s case; or (2) by demonstrating that the  
7 nonmoving party failed to make a showing sufficient to establish an element essential to that  
8 party’s case on which that party will bear the burden of proof at trial. *See Celotex*, 477 U.S. at  
9 323-25. If the moving party fails to meet its initial burden, summary judgment must be denied  
10 and the court need not consider the nonmoving party’s evidence. *See Adickes v. S.H. Kress &*  
11 *Co.*, 398 U.S. 144, 160 (1970).

12 If the moving party satisfies its initial burden, the burden shifts to the opposing party  
13 to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*  
14 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,  
15 the opposing party need not establish a material issue of fact conclusively in its favor. It is  
16 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the  
17 parties’ differing versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*  
18 *Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987)(quotation marks and citation omitted). The  
19 nonmoving party cannot avoid summary judgment by relying solely on conclusory allegations  
20 that are unsupported by factual data. *Id.* Instead, the opposition must go beyond the assertions  
21 and allegations of the pleadings and set forth specific facts by producing competent evidence  
22 that shows a genuine issue for trial. *See Fed.R.Civ.P. 56(e); Celotex*, 477 U.S. at 324.

23 At summary judgment, a court’s function is not to weigh the evidence and determine the  
24 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.  
25 While the evidence of the nonmovant is “to be believed, and all justifiable inferences are to be  
26 drawn in its favor,” if the evidence of the nonmoving party is merely colorable or is not  
27 significantly probative, summary judgment may be granted. *Id.* at 249-50, 255 (citations  
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omitted).

### **III. DISCUSSION**

As set forth above, the moving party bears the burden of informing the court of the basis for its motion, together with evidence demonstrating the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Here, Plaintiff would bear the burden of proof at trial. Therefore, it is his burden on a motion for summary judgment to “come forward with evidence which would entitle [him] to a directed verdict if the evidence went uncontroverted at trial.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal quotation marks and citations omitted). Thus, Plaintiff is tasked with establishing the absence of a genuine issue of fact as to each issue material to his case. *Id.*

The court has reviewed Plaintiff’s motions and finds that Plaintiff has not met his burden. Plaintiff’s first motion consists of conclusory statements challenging the affirmative defenses raised in Defendants’ Answer. (Doc. # 35.) Plaintiff’s second motion accuses defense counsel of lying when the allegations of Plaintiff’s Complaint were denied in Defendants’ Answer. In addition, the second motion contains conclusory statements regarding the veracity of his claims. (Doc. # 44.) Plaintiff did not submit any evidence in support of his motion. Moreover, he has not established the absence of a genuine issue of material fact as to each of his claims. Therefore, Plaintiff’s motions for summary judgment should be denied.

### **IV. RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that the District Judge enter an Order **DENYING** Plaintiff’s motions for summary judgment (Doc. # 35 and Doc. # 44).

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of Practice, specific written objections to this Report and Recommendation within fourteen (14) days of receipt. These objections should be titled “Objections to Magistrate Judge’s Report and Recommendation” and should be accompanied by points and authorities

1 for consideration by the District Court.

2 2. That this Report and Recommendation is not an appealable order and that any  
3 notice of appeal pursuant to Rule 4(a)(1), Fed. R. App. P., should not be filed until entry of the  
4 District Court's judgment.

5 DATED: January 4, 2013.

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7 WILLIAM G. COBB  
8 UNITED STATES MAGISTRATE JUDGE  
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